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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FILED

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

08 MJ 07 01

BY:

DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

Benjamin AVILA-Magadan

Defendant.

Magistrate Case No.

COMPLAINT FOR VIOLATION OF:

Title 8, U.S.C., Section 1326;  
Deported Alien Found in the  
United States

The undersigned complainant, being duly sworn, states:

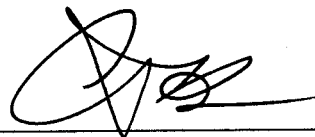
On or about, **February 06, 2008**, within the Southern District of California, defendant, **Benjamin AVILA-Magadan**, an alien, who previously had been excluded, deported and removed from the United States to Mexico, was found in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8, United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.



SIGNATURE OF COMPLAINANT  
Lisette Guzman, Deportation Officer  
Immigration & Customs Enforcement

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS **6th** DAY OF **March 2008**.



UNITED STATES MAGISTRATE JUDGE

**CATHY ANN BENCIVENGO**  
**U.S. MAGISTRATE JUDGE**

FAS

**CONTINUATION OF COMPLAINT:****NAME: AVILA-Magadan, Benjamin****PROBABLE CAUSE STATEMENT**

As part of assigned duties of the Detention and Removal Office, Deportation Officers review various sources in order to check on aliens that have been previously removed from the United States. This is done in order to determine if subjects have returned to the United States, in violation of Title 8, United States Code, Section 1326.

On Wednesday, February 06, 2008, the defendant identified as Benjamin AVILA-Magadan was arrested in Fallbrook, California by the San Diego Sheriff Department for violation of 3056 PC "PAROLE VIOLATION" and booked into Vista Jail. On Wednesday, February 06, 2008, an Immigration Enforcement Agent with Immigration and Customs Enforcement determined the defendant to be a citizen of Mexico and placed a Form I-247 "Immigration Detainer" pending his release from local custody. On Wednesday, March 05, 2008, at approximately 9:30 a.m. the defendant was referred to the custody of United States Immigration and Customs Enforcement (ICE). A Deportation Officer reviewed various sources of information and conducted official record checks in regards to the defendant confirming him to be a citizen of Mexico having been previously removed from the United States.

A thorough review of official immigration computer database record checks and information contained in the Alien Registration file revealed that the defendant was most recently ordered removed from the United States by an Immigration Judge on or about November 23, 2005 and physically removed to Mexico on or about November 23, 2005 via the San Ysidro Port of Entry. Record checks also reveal that the defendant was issued a Reinstatement of Removal order on or about January 29, 2007 and was physically removed to Mexico on that date via the San Ysidro Port of Entry. Record checks further indicate that the defendant has not applied to the Attorney General of the United States or the Secretary of the Department of Homeland Security for permission to re-enter the United States.

The Automated Biometric Fingerprint Identification System "IDENT" and Automated Fingerprint identification System "IAFIS" were utilized and compared the defendant's fingerprints to those contained in these databases. The results confirmed the defendant's identity as Benjamin AVILA-Magadan, a citizen and national of Mexico. A photograph and a set of fingerprints contained within the official Alien Registration File were also reviewed and compared to the defendant, further confirming his identity.

All information indicates that the defendant is a citizen of Mexico, was ordered removed to Mexico and has no legal right to enter or reside in the United States.

Based upon the foregoing information, there is probable cause to believe that Benjamin AVILA-Magadan has illegally re-entered the United States after Deportation, in violation of Title 8 of the United States Code 1326, Deported Alien Found in the United States.